

REMARKS

The Examiner has rejected claims 1-19 under 35 U.S.C. 251 as being based upon a defective reissue declaration. A supplemental declaration is being submitted with this response.

The Examiner has requested Applicants to offer to surrender the original patent. Applicants will surrender the original patent when the Examiner has indicated that the application, including all pending claims, is in a condition for allowance.

Claims 1-19 are pending in the application. Claims 1-19 stand rejected. The Examiner has indicated that claims 1-19 are allowable, provided the formal requirements addressed below are complied with or specifically traversed.

The Examiner has stated that since the reissue application was filed on or after November 29, 2000, the Applicants would have to file a petition for an unintentionally delayed priority claim under 37 CFR 1.78(a)(3) and (a)(6), and MPEP 201.11. Applicants traverse this requirement.

MPEP § 1402 expressly states:

“If the utility or plant application which became the patent to be reissued was filed on or after November 29, 2000, the reissue applicant will have to file a petition for an unintentionally delayed priority claim under 37 C.F.R. 1.178(a)(3) and (a)(6) in addition to filing a reissue application. See MPEP § 201.11.”

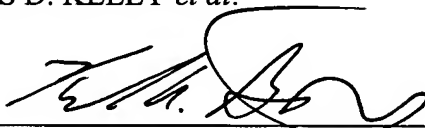
The patent to be reissued (i.e., U.S. Patent No. 5,996,036) was filed on January 1, 1997, which is before November 29, 2000. Thus, the request for benefit of claim priority has been properly submitted before the Examiner.

Applicants submit that this application is now in condition for allowance. Reconsideration and allowance of this application is hereby solicited.

Respectfully submitted,

JAMES D. KELLY *et al.*

Dated: December 18, 2002

By: 
Kirk A. Gottlieb, Reg. No. 42,596
Attorney for Applicants
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306
Tel.: (415) 875-2414
Fax: (415) 281-1350